

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of a Petition by Great Plains
Natural Gas Company, a Division of MDU
Resources Group, Inc., for Authority to
Increase Natural Gas Rates in Minnesota

**SECOND
PREHEARING ORDER**

This matter came on for telephone conference before Administrative Law Judge Richard C. Luis on May 10, 2005, at 2:00 p.m.

Brian M. Meloy, Attorney at Law, Leonard, Street and Deinard, P.A., 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402 and Donald R. Ball, Assistant Vice President for Governmental Affairs, 400 N. Fourth Street, Bismarck, ND 58501-4092 appeared on behalf of Great Plains Natural Gas Company (Great Plains).

Vincent Chavez, Gas Division Supervisor for the Minnesota Department of Commerce (Department) and Julia Anderson, Assistant Attorney General, 445 Minnesota Street, Suite 1400, Saint Paul, MN 55101, appeared on behalf of the Department.

Janet Gonzalez, Rates Analyst, Clark Kaml, Rates Analyst, Robert Harding, Rates Analyst, Bret Ecknes, Rates Analyst, and Kari Zipko, Assistant Attorney General, 445 Minnesota Street, Suite 1100, Saint Paul, MN 55101, appeared on behalf of the Commission staff.

Based on the discussions during the telephone conference, and all of the files and proceedings, the Administrative Law Judge makes the following:

ORDER

1. The motion by Great Plains Natural Gas Company (Great Plains) to include information request (IR) responses in the rebuttal testimony (originally filed on April 6, 2005) of witnesses Morehouse and Mulkern is GRANTED. The Minnesota Department of Commerce (Department) is entitled to conduct discovery into the contents of those IR responses under the terms set forth in this Order.

2. Great Plains' motion to admit limited substantive revisions to the rebuttal testimony of Mulkern on interruptible volumes sales forecasts and the rebuttal testimony of Morehouse regarding marketing expenses is GRANTED. The Department is entitled to conduct discovery into the new information presented by each witness under the terms set forth in this Order.
3. The motion by Great Plains to correct the erroneous rate design applied in the rebuttal testimony of witness Aberle is GRANTED. Due to the serious impact of this change in the rate design, the hearing in this matter is continued from its scheduled date of May 16, 2005. The Department is entitled to conduct discovery into the newly proposed rate design under the terms set forth in this Order.
4. Due to the scope of the additional information allowed into the prefiled testimony in this matter the Department is afforded the opportunity to submit additional written surrebuttal testimony to be filed no later than July 5, 2005.
5. A telephone status conference will be conducted on May 19, 2005, at 3:00 p.m. to assess the parties' progress toward issue resolution, status regarding ongoing discovery, and readiness for hearing in accordance with the following schedule.

SCHEDULE

6. The following amendments to the schedule are adopted:

Surrebuttal Testimony (Department)	July 5, 2005
Evidentiary Hearings (including hearing any pretrial motions)	July 11 - 13, 2005 (with any additional dates to be determined)
Initial Briefs	August 17, 2005 (Estimated, date to be announced at conclusion of hearing)
Reply Briefs and Proposed Findings	August 31, 2005 (Estimated, date to be announced at conclusion of hearing)

SETTLEMENT

7. Pursuant to Minn. Stat. §216B.16, subd. 1(a), the Administrative Law Judge is required to convene a proceeding for the purposes of discussing settlement of issues in a public utility rate proceeding. During the telephone conference, the Administrative Law Judge encouraged the parties to exhaust opportunities for a

settlement of issues and reminded the parties that an extension of the hearing date had been granted for exploring settlement. The parties should inform the Administrative Law Judge if an additional proceeding should be convened to discuss settlement. The parties are further informed that other settlement mechanisms, including mediation, are available through the Office of Administrative Hearings.

RELIEF GRANTED IS CONDITIONAL

8. As was thoroughly discussed at the telephone conference, the mechanism established for rate-setting in Minn. Stat. §216B.16, subd. 2, contemplates the filed rate taking effect if the Commission does not take final action on the filing within ten months of the acceptance of the filing as complete. While the time period can be extended to twelve months due to unsuccessful settlement negotiations (as took place in this matter), the statute does not afford any longer period for deciding on a rate filing.
9. Accepting Great Plains' explanation that the necessary changes to its proposed rate design arose from an inadvertent error, this leaves the matter in an untenable state. The Department is entitled to enough time to reasonably assess the effect of the rate design on the various affected customer classes. This amount of time would put the Commission decision outside of that afforded for a final decision. One alternative would be to dismiss this proceeding and require re-filing of Great Plains' rate case. This result would require refunding of any interim rate increase granted by the Commission. That result would work a hardship on Great Plains.
10. Relying on Commission precedent in rate-setting contested cases, a utility can request that the time limitations be waived to allow the Commission sufficient time to reach a final determination.^[1] This outcome meets the needs of both the Commission for adequate time to render a decision on the merits of this application, and the utility for retention of interim rate increase of \$1,431,132 granted to Great Plains by the Commission and effective January 10, 2005.^[2]
11. Following the procedures deployed in an earlier docket before the Commission, Great Plains can move to waive the time lines in Minn. Stat. §216B.16, subd. 2. The relief granted in this Order is expressly conditioned on Great Plains' submitting a motion requesting a waiver of the timelines in the statute. Such a motion should be filed with the Office of Administrative Hearings no later than May 18, 2005. In the absence of a timely motion to waive those time lines, the Administrative Law Judge will, *sua sponte*, issue a Recommendation to the Commission that this matter be dismissed and any interim rate increases collected by Great Plains be refunded.

DISCOVERY

12. The discovery rules established in the first Prehearing Order in this matter remain in effect, with the following modifications:
 - A. The party responding to an information request shall provide the information requested to the requesting party within five business days after receipt of the request, unless the requesting party agrees to provide additional time.
 - B. In the event the information cannot be supplied within five business days, the responding party shall notify the requesting party within three business days of the reasons for not being able to supply the information and to work out a schedule of compliance with the requesting party. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Notice of such a motion shall be made by email and will be heard on an expedited basis by telephone conference among the Administrative Law Judge and affected parties.

This Order is effective immediately. Modifications to this Order may be made by the Administrative Law Judge, for cause.

Dated this 12th day of May, 2005.

/s/ Richard C. Luis
RICHARD C. LUIS
Administrative Law Judge

MEMORANDUM

In granting the relief requested in Great Plains' motion, the Administrative Law Judge has focused on the issues of notice, fairness, and judicial economy. With respect to the inclusion of IR responses, the Department has had these documents since they were submitted by Great Plains, thus notice is not a problem. The Department's concern that that these documents are merely statements of the utility does not preclude their inclusion in the record, since the same can be said about any prefiled testimony. With the opportunity to conduct discovery and file surrebuttal testimony, there is no unfairness to including these documents as part of the prefiled testimony of Great Plains. The normal practice of cross-examination or redirect examination would allow those documents into the record during the hearing. Allowing the documents in as part of the prefiled testimony merely enhances judicial economy by reducing the amount of hearing time spent handling documents.

On the issue of substantive revisions to the rebuttal testimony regarding interruptible volumes sales forecasts and marketing expenses, the Administrative Law Judge accepts Great Plains' explanations regarding not being able to address the issues since they were raised for the first time on surrebuttal by the Department. Again, the opportunity for delivering the same testimony at the hearing on redirect weighs in favor of including the testimony in the record now. Any unfairness to the Department is addressed by the extended time to respond before the hearing, the opportunity for additional discovery, and opportunity to file additional surrebuttal testimony.

The change in rate design necessitated by Great Plains' inadvertent error raises a different set of problems. Contrary to Great Plains' contention, the change in rate design is not of limited impact. The extensive work performed by the Department must be revised in light of the new allocation of revenue increases across two service territories. The scope of the workpapers appended to the amended rebuttal testimony demonstrates that additional time before the hearing is needed to assess the proposed rate changes.

The necessary delay in the hearing on this matter implicates the statutory deadlines of Minn. Stat. §216B.16, subd. 2. The seriousness of this matter to the Commission was amply demonstrated by the participation of an exceptional number of staff in the telephone conference held on Great Plains' motion. As discussed during the conference, in the Commission's ***Aquila*** decision the binding waiver of the applying utility was accepted to avoid dismissal of the proceeding.

The Administrative Law Judge proposes to follow the ***Aquila*** approach in this proceeding. The procedural mechanism of a motion has been adopted to allow the Department and the Commission the opportunity to assess the adequacy of the waiver proposed by Great Plains. The alternative to such a motion is to recommend dismissal of this proceeding. To ensure that the statutory time lines are not inadvertently exceeded, a deadline for the motion has been provided and the absence of such a motion will result in an immediate recommendation to the Commission that this matter be dismissed.

R.C.L.

^[1] ***ITMO a Petition by Peoples Natural Gas Company and Northern Minnesota Utilities, Divisions of UtiliCorp United Inc., for Authority to Increase Natural Gas Rates in Minnesota and to Consolidate the Two Utilities***, G-007, 011/GR-00-951, at 3, (Commission Order Accepting and Adopting Settlement issued July 29, 2003)("Aquila").

^[2] ***ITMO a Petition by Great Plains Natural Gas Company, a Division of MDU Resources Group, Inc., for Authority to Increase Natural Gas Rates in Minnesota***, (Commission Order Setting Interim Rates issued November 27, 2004)(<http://www.puc.state.mn.us/docs/orders/04-0154.pdf>).